



Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

16-ESQ-0068

APR 27 2016

Mr. Ron Skinnarland
Waste Management Section Manager
Nuclear Waste Program
Washington State Department of Ecology
3100 Port of Benton Boulevard
Richland, Washington 99354

Dear Mr. Skinnarland:

COMMENTS ON THE DRAFT PROPOSED PERMIT MODIFICATION 8C.2016.2D TO THE HANFORD FACILITY RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) PERMIT, DANGEROUS WASTE PORTION, REVISION 8C, FOR THE TREATMENT, STORAGE, AND DISPOSAL DANGEROUS WASTE, PART V, CLOSURE UNIT GROUP 6, WASTE ENCAPSULATION AND STORAGE FACILITY (WESF) HOT CELLS A THROUGH F, WA7890008967

This letter is responding to your letter of March 11, 2016, (16-NWP-048) regarding the Permit Modification 8C.2016.2D to the Hanford Facility RCRA Permit for WESF. The U.S. Department of Energy Richland Operations Office (RL) and its Contractors have reviewed the draft RCRA Permit, Dangerous Waste Portion, Revision 8C, for the Treatment, Storage, and Disposal Dangerous Waste, Part V, Closure Unit Group 6, WESF Hot Cells A through F Closure Plan, and the Addendum A, WESF Part A Form published for public comment. To ensure a thorough understanding of the permit and conditions, RL has reviewed each condition, addendum, and attachment to determine whether the condition or requirement:

- Is consistent with the regulatory requirements under the Washington Administrative Code (WAC) and within the scope of Ecology's permitting authority;
- is clearly written and understandable;
- is consistent with the long history of our prior agreements with Ecology;
- reflects current operational needs and requirements; and
- could practically be met to maintain compliance.

We have prepared our comments in a Review Comment Response format consistent with comments received from the Washington State Department of Ecology (Ecology). This format provides: (1) the condition or requirement identifier; (2) a comment that reflects what is necessary to be done with the condition or requirement; (3) a basis for the action proposed in the comment; and (4) suggested language where appropriate that would make the condition or requirement acceptable to the Permittees. RL has identified two primary issues of concern

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regarding changes to the permit from the time of submittal of the draft permit from RL to Ecology and the time of publication for public comment.

Comment Number 1:

Permit Section:

Addendum A WESF, Part A Form, Section XII. Process Codes and Design Capacities and Section XIII. Other Process Codes.

Comment Text:

Section XII and Section XIII Line Item 1.C Process Total Number of Units was modified from "002" to "003." The Permittees believe the Process Total Number of Units is "002" as submitted to Ecology, which includes the two operating dangerous waste management units: Hot Cell G and the Pool Cells. The Hot Cell A through Hot Cell F dangerous waste management unit is a closing unit and is not available for storage of the waste stream located in WESF.

Basis Text:

The Part A Form instructions state, "For container storage, combine all storage capacity on one line and list the number of container storage units under C. Process Total Number of Units." Hot Cells A through F will be filled with grout and closed. Once the unit is filled with grout, there will be no storage capabilities for the waste stream located in WESF; therefore, it should not be included in the design capacity number of units. As modified by Ecology, the CH2M HILL Plateau Remediation Company (CHPRC) would be unable to certify the Part A Form.

Recommended Text:

Section XII and Section XIII Line Item 1.C Process Total Number of Units should be modified to "002."

Comment Number 2:

Permit Section:

Addendum H WESF Hot Cell A through F Dangerous Waste Management Unit Closure Plan, Section H-A5.7, Removal of Wastes and Waste Residues, page Addendum H.50, lines 21-23.

Comment Text:

Section H-A5.7, page Addendum H.50, lines 21-23 were modified from the draft provided to Ecology from RL as follows:

"Waste ~~remaining~~ in the trays and pipes ~~was generated before RCRA became effective on the Hanford Facility, but it is conservatively managed as hazardous waste to establish~~ has been in storage since the hot cells were placed in surveillance and maintenance mode. These containers are subject to the dangerous waste regulations and must meet closure performance standards."

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Basis Text:

RCRA waste management regulations only apply to actions taken to manage waste after the date when the waste was legally classified as hazardous waste subject to the RCRA regulations. The first date when RCRA regulations became effective to some categories of waste was November 19, 1980. As explained by the U.S. Environmental Protection Agency (EPA) in the December 21, 1988, Federal Register (Vol. 53, 51444), "Many CERCLA actions occur in areas of contamination that contain waste treated, disposed of, or stored prior to November 19, 1980. If left *untouched, wastes in such areas* are not currently regulated under Subtitle C of RCRA." (Emphasis added.) In other words, waste which was put in place prior to the effective date of the regulation which later classified it as hazardous waste, and had not been moved since that date (in that case, some 8 years later) had not been "actively managed" during the period when RCRA regulation was in effect, and the waste was therefore not subject to regulation under RCRA.

Similarly, Washington regulations recognize this jurisdictional time limit in WAC 173-303-040, which defines "generator" as "any person, by site, whose act or process produces dangerous waste or whose act first causes a dangerous waste to become subject to regulation." (Emphasis added.)

EPA did not initially authorize Ecology to regulate the management of the dangerous waste component in a mixture of radioactive and mixed waste. EPA granted authorization to first regulate the management of radioactive mixed waste in August 1987. Actions managing radioactive mixed waste prior to that date were not, and are not, regulated by Ecology. The waste in the trays and pipes in these areas of WESF was put in its current location prior to the August 1987 effective date when Ecology began regulating the management of radioactive mixed waste. Since that time, the waste has been left untouched, and has not experienced any active management which could trigger application of the dangerous waste regulations to this waste. To summarize, the waste in these locations has not been actively managed because it has not been physically disturbed, nor have additional wastes been added to these wastes. Indeed, while the management of Cesium 137 and Strontium 90 capsules in a radioactive materials storage pool has been agreed by Ecology and RL to constitute management of mixed waste, and; therefore, is subject to various requirements of WAC 173-303, by contrast the waste in the trays and pipes at issue here has never been included in the description of the waste managed under the WESF dangerous waste permit during the nearly 30 years since August 1987.

Recommended Text:

Section H-A5.7, page Addendum H.50, lines 21-23 should read, "Waste remaining in the trays and pipes was generated and put in place before August 1987, when mixed radioactive waste was first regulated on the Hanford Facility, and has not been regulated under RCRA and WAC 173-303. Nevertheless, the non-radioactive component of this material will be addressed according to dangerous waste closure performance standards to assure protection of human health and the environment."

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Comment Number 3:

Permit Section:

Addendum A Waste Encapsulation and Storage Facility Part A Form, Section XII. Process Codes and Design Capacities and Section XIII. Other Process Codes and Addendum H WESF Hot Cell A through F Dangerous Waste Management Unit Closure Plan, Section H-A5.7, Removal of Wastes and Waste Residues, page Addendum H.50, lines 21-23.

Comment Text:

Section XII and Section XIII Line Item 1.C Process Total Number of Units was modified from "002" to "003." The Permittees believe the Process Total Number of Units is "002" as submitted to Ecology, which includes the two operating dangerous waste management units: Hot Cell G and the Pool Cells. The Hot Cell A through Hot Cell F dangerous waste management unit is a closing unit and is not available for storage of the waste stream located in WESF.

Section H-A5.7, page Addendum H.50, lines 21-23 were modified from the draft provided to Ecology.

Basis Text:

The closure plan package submittal to Ecology requires that the department either accept it as filed, or provide a completeness determination. It is not a charter for Ecology to disagree with the substance of the plan and the permit modification it is embedded in, but to simply ensure that it has all the basic information to constitute a "closure plan."

The WAC 173-303-830(4) regulations states that permit modifications that are submitted by a permit holder are to be published by the permit holder and public comments submitted to Ecology, which will consider amendments in the final version of the permit modification after considering public comment. Ecology has made a revision before the submitted version was offered for public comment.

Recommended Text:

Section XII and Section XIII Line Item 1.C Process Total Number of Units should be modified back to what RL and CHPRC certified in the modification submittal, "002" as stated in Comment 1 above.

Section H-A5.7, page Addendum H.50, lines 21-23 should be modified back to what RL and CHPRC certified in the modification submittal as stated in Comment 2 above.

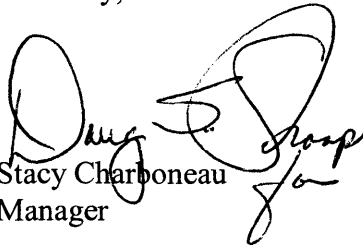
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If you have any questions, please contact me, or your staff may contact Jeffrey A. Frey, Assistant Manager, Safety and Environment, on (509) 376-7727.

Sincerely,


Stacy Charboneau
Manager

ESQ:ACM

cc: Debra J. Alexander, Ecology
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Connie J. Simiele, CHPRC
Deborah G. Singleton, Ecology
Raymond T. Swenson, CHPRC
Administrative Record
Ecology NWP Library
Environmental Portal
HF Operating Record (J. K. Perry, MSA, A3-01)